IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 81 of 2002
IN
SPECIAL CIVIL APPLICATION No 2206 of 1986

WITH

CIVIL APPLICATION No 9668 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT
Versus
RAVJIBHAICHHOTABHAI PATEL

Appearance:
1. LETTERS PATENT APPEAL No. 81 of 2002
MR LR PUJARI, AGP for Appellant No.1-2
MR MK VAKHARIA for Respondent No. 1-4

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/05/2002

CAV JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. The State of Gujarat and others have preferred this appeal under clause 15 of the Letters Patent challenging the judgment of the learned Single Judge [Coram : B.C. Patel, J.] dated 16/6/2000 rendered in Special Civil Application No. 2206 of 1986, whereby the learned Judge has decided question regarding the possession of the land forming subject matter of this proceeding in favour of the respondents and has disposed of the petition on the ground of it having abated in light of the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act').

2. Some relevant facts necessary for the present proceedings can be stated as under :-

2.1. Late Smt. Javerben, wife of Somabhai Mohanbhai owned agricultural land bearing Revenue Survey No. 660/2 admeasuring H. 0-01-01 Are and agricultural land bearing survey no. 662 admeasuring H. 0-46-54 Are in village Kapurai in District Vadodara. The said lands were bequeathed by late Smt. Javerben to her brothers, namely the present respondents, vide registered letter dated 30/5/1974. She died on 11/7/1974 and by virtue of her will these lands were inherited by respondents. The lands were mutated in the name of respondents in revenue record vide entry no. 1525 dated 19/4/1977. This entry was effected in respect of respondents nos. 1, 2 and 3 only as respondent no. 4 was minor at the relevant time. The said entry came to be certified by the Competent Officer under the provisions of the Bombay Land Revenue Code.

2.2. With the introduction of the Act respondents were required to file Form No. 1 in accordance with provisions of Section 6 of the Act, as they were holding more land than the ceiling limit. They also filed affidavit accompanying Form No. 1 giving details regarding their land holding. As per the details given by the respondents their land holding could be stated as under :-

Sr.No.	Name of village	Survey No.	Area in sq.mtrs.
1.	Kapurai	660/2	101
2.	Kapurai	662	4654

Total :	4755

3. Where no construction was made 1500

Total :	6255

After taking into consideration the details submitted by respondents the Competent Authority determined 3255 sq. mtrs. as excess land. Thereafter a draft statement was prepared under the provisions of Section 8(1) of the Act and it was duly served on the respondents under the provisions of section 8(3) of the Act. The respondents submitted their objections against the said draft statement on 11th November, 1982 and the parties were heard on 4th December, 1982 by the Competent Authority and Deputy Collector, Vadodara in the proceedings numbered as ULC-DE No. Kapurai- 7705. The Competent Authority came to the conclusion that looking to the record the lands had been transferred to the respondents' name vide entry no. 1525 dated 19th April, 1977 and the said lands being in the joint name of the respondents it could be considered as only one unit and the respondents were entitled to hold only 1500 sq. mtrs. of land. The Competent Authority, therefore, declared excess land as under :-

Sr.No.	Name of village	Survey No.	Area in sq.mtrs.
1.	Kapurai	660/2	101
2.	Kapurai	662	3154

	Total :		3255

The Competent Authority, therefore, passed order dated 30th December, 1982. This order was duly intimated to the respondents nos. 1, 3 and 4 on 21st January, 1983 and to the respondent no. 2 on 22nd January, 1983. The Competent Authority also prepared final statement under the provisions of section 9 of the Act and served it on the respondents on 15th February, 1983. Subsequently the Competent Authority complied with the provisions of section 10(1) and (2) of the Act and notification under section 10 (3) came to be issued on 9th June, 1983 and it was published in the Government of Gujarat Gazette on 11th August, 1983.

2.3. The respondents having been aggrieved by the order of the Competent Authority dated 30th December, 1982 preferred appeal before the Urban Land Tribunal at Ahmedabad being Appeal No. Baroda 69/85. In the meanwhile after publication of notification under section

10(3) of the Act the Competent Authority took steps to take possession of the excess land from the respondents. Hence, notice under section 10(5) of the Act was issued on 29th January, 1985, which was served on the respondents on 27th February, 1985. However, since the respondents did not remain present at the site, the possession could not be taken. Another notice under section 10 (5) of the Act was issued on 1st April, 1985 which was served on the respondents on 6th April, 1985. On that occasion also the possession could not be taken and hence third notice came to be issued to the respondents on 31st July, 1985 which was served on them on 4th September, 1985 calling upon the respondents to remain present at the site on 19th September, 1985 to enable the concerned officer to take possession of the land. In the instant case the Maintenance Surveyor of Unit No. 4 was duly authorized by the State Government to take possession of the land in question. He, therefore, went to Kapurai alongwith two panchas. On this occasion also the respondents did not remain present to hand over the vacant and peaceful possession of the excess land and hence in their absence the Surveyor after drawing necessary panchnama took actual and physical possession of the land on 19th September, 1985.

2.4. So far the appeal filed by the respondents before the Urban land Tribunal was concerned, the Tribunal came to the conclusion that the Government had already taken possession of the land in dispute under section 10(6) of the Act. It also came to the conclusion that even after issuance of notification under section 10 (3) of the Act their excess land vested into the Government free from all encumbrances as per the decision rendered by this Court in the case of Jitendra Nanalal v/s. Patel Lallubhai Ishwarbhai reported in 25 G.L.R. page 1001 and decision rendered in the case of Savitaben Patel v/s. Secretary, R.D. in Special Civil Application No. 120 of 1984 on 15th February, 1984. In light of this, in the opinion of the Tribunal no appeal could lie at that stage. Moreover, the Tribunal also held that the order of the Competent Authority was delivered on 30th December, 1982 and it was duly communicated on 21st January, 1983 and 22nd January, 1983 to the respondents and the appeal was filed on 1st April, 1985. Thus, the appeal was barred by the period of limitation. In view of these findings, the Tribunal dismissed the appeal vide judgment dated 25th November, 1985.

2.5. The respondents having been aggrieved by the said judgment of the Tribunal approached this Court under Articles 226 and 227 of the Constitution of India by

filing Special Civil Application No. 2206 of 1986. This petition was filed in April 1986. While admitting the petition this Court granted ad-interim relief restraining the appellants from taking possession of the land in question from the respondents pending hearing and final disposal of the said petition on condition that the respondents would not part with the possession of the said land till then. From the judgment of the learned Single Judge it appears that the appellants did not file any affidavit in response to the petition and the learned Single Judge came to the conclusion that the claim of the respondents that they were in possession of the land in dispute was not controverted by the present appellants and there was no material placed before the Court which indicated that the possession of the land was already taken over by the Government, the possession of land in question still remained with the respondents. The learned Single Judge therefore, disposed of the petition as it having abated by virtue of provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short 'the Repeal Act').

2.6. The appellants having been aggrieved by the said judgment of the learned Single Judge, have approached the Division Bench by filing Letters Patent Appeal alongwith Civil Application No. 9666 of 2001 praying for condonation of delay of 394 days. The said application was granted by this Court [Coram : J.N. Bhatt and D.H. Waghela, JJ.] vide order dated 14th February, 2002 and directed the main appeal to be placed for final hearing. In these circumstances, the present appeal has now come for disposal before us.

3. Mr. L.R. Pujari, Ld. AGP appearing for the appellants has contended before us that the judgment of the learned Single Judge is erroneous in asmuch as the land in question already vested in the Government under section 10 (3) of the Act and the possession thereof was already taken over by the State Government through the Competent Authorityas early as 19th September, 1985. Hence, provisions regarding abatement of the legal proceedings would not apply to the present case. He has further submitted that all the legal formalities including taking physical possession of the disputed land have been over and the matter now rests at the stage of determining the amount to be paid for acquiring the vacant land under section 11 of the Act. Provisions of section 4 of the Repeal Act clearly provide that when the matter is pending at the stage of section 11 of the Act, the provisions with regard to abatement of the legal proceedings would not apply. He, therefore, submitted

that the judgment of the learned Single Judge is required to be quashed and set aside.

3.1. As against that, Mr. M.K. Vakharia, learned counsel for the respondents has submitted that possession of the land in question is still with the respondents and precisely for that reason the learned Single Judge of this Court while admitting the petition granted interim relief to the effect that possession thereof should not be taken by the Government till the petition was finally disposed of. He has further submitted that the learned Single Judge while granting the interim relief also imposed condition on the respondents that they should not part with the possession of the land in favour of any one till the petition was finally decided. According to Mr. Vakharia, this fact alone would go to show that the possession of the land is with the respondents and, therefore, the learned Single Judge has not committed any error in applying the provisions of abatement. He has further submitted that the land in question is agricultural land and the provisions of the Act would not apply to the same. He has also submitted that though the land was mutated in the names of the respondents vide entry dated 19th April, 1977, they actually became the owners of the land on the death of late Javerben on 11th July, 1974 and, therefore, all the respondents were entitled to hold one separate unit individually and the Competent Authority as well as the Tribunal have committed error in treating it as joint ownership having only one unit and that has caused grave prejudice to the respondents. Lastly he has submitted that this appeal does not have any merit and it deserves to be dismissed.

4. Though the appellants at the time of hearing of the petition before the learned Single Judge had not filed counter affidavit placing all the material relating to this case in the Court, with the permission of the Court, they have now filed additional affidavit in reply dated 28th February, 2002 of Mr. V.C. Varma, Addl. Collector, Coordination, Vadodara. Alongwith the affidavit, the appellants have also placed on record relevant documents including all the postal acknowledgement receipts in support of their contentions. The respondents have not chosen to file affidavit-in-rejoinder to this affidavit. Perusal of the record shows that after the respondents filed form no. 1 alongwith the affidavit under section 6 of the Act, the Competent Authority prepared draft statement which was duly served on the respondents, to which they filed objections and after hearing the parties the Competent Authority on 30th December, 1982 declared 3255 sq. mtrs.

of land as excess land. Thereafter, the notification under section 10(3) relating to land in question came to be published in the Government Gazette on 11th August, 1983. It is well settled law by now that upon publication of notification under section 10(3) of the Act the land stands vested in the State Government free from all encumbrances. In this case also, upon publication of notification under section 10(3) of the Act, the land in question came to be vested in the State Government free from all encumbrances and the respondents have ceased to have any right, title or interest in the said land. The record further shows that things have even travelled further than the stage of section 10(3) of the Act. In accordance with the provisions of section 10(5) of the Act, before taking physical possession of the land respondents were served with notices on three occasions, namely, on 29th January, 1985, 1st April, 1985 and 31st July, 1985 and all these notices were duly received by the respondents as per the copies of the acknowledgement receipts placed on record by the appellants. The respondents also do not dispute this fact. However, the respondents on all the three occasions did not remain present to hand over possession and ultimately on 19th September, 1985 the authorized officer, namely, the Maintenance Surveyor of Unit No. 4 took physical possession of the land in presence of two independent persons acting as panchas. While taking the possession necessary panchnama was also drawn which has been placed on record alongwith the affidavit of Mr. Varma. There is absolutely no reason to doubt these documents. The panchnama clearly shows that on 19th September, 1985 the respondents had not remained present. However, the physical possession of the land was taken by the authorized officer in accordance with the provisions of sub-section (6) of section 10 of the Act, as the respondents did not deliver the possession after issuance of notice under section 10(5) of the Act. When the possession of the land is taken over by the State Government, nothing more is required to be done except determination of the amount to be paid to the land holders in accordance with provisions of section 11 of the Act. Thus, considering the fact that possession of the land was already taken over by the Government way back on 19th September, 1985, the whole matter is now pending only at the stage of section 11 of the Act. Section 3 of the Repeal Act provides saving clause. It reads as under :-

"3. Savings.- (1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under

sub-section (3) of section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under sub-section (1) of section 30 or any action taken thereunder, notwithstanding any judgment of any court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under sub-section (1) of section 20.

(2) Where-

(a) any land is deemed to have vested in the State Government under sub-section (3) of section 10 of the principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government."

Thus when there is vesting of any vacant land under section 10(3) of the Act and the possession thereof is taken by the State Government or authorized officer or Competent Authority, the provisions of Repeal Act will not affect and it will not alter that position.

From the record of Special Civil Application No. 2206 of 1986 it appears that the respondents had been served with intimation calling upon them to remain present before the Competent Authority and Deputy Collector, Urban Land Ceiling Unit No. 4, Vadodara, alongwith all the necessary evidence on 23rd April, 1986 at 1.00 p.m. for determination of amount to be paid to them under section 11 of the Act for acquiring their excess land. It appears that respondents having received that notice had approached this Court by filing aforesaid petition, by suppressing material fact regarding Government having taken over the possession of the vacant land from the respondents. We have been informed at the bar that the respondents have till date not accepted the amount. The fact remains that the whole matter now rests at the stage of section 11 of the Act only. Section 4 the Repeal Act provides for abatement of all proceedings relating to order made or purported to have been made under the Act. Section 4 of the Repeal Act reads as

under:-

"4. Abatement of legal proceedings.-
All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate :
Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."

Proviso to this section carves out exception and it withholds the applicability of this section to proceedings relating to sections 11, 12, 13 and 14 where the possession is taken over by the Government or any authorised person or Competent Authority.

In above view of the matter, we find that the judgment of the learned Single Judge was based on incorrect facts and in consequence thereof the conclusion reached by the learned Single Judge was erroneous. In view of proviso to section 4 order regarding abatement of proceedings could not have been passed by the learned Single Judge. We are, therefore, inclined to accept the main submission of Mr. Pujari and we find no merit in the contention raised by Mr. Vakharia that the possession of the land in question is still with the respondents and the proceedings stand abated. Since the matter is at the stage of section 11, the question regarding abatement does not arise at all.

5. So far the contention raised by Mr. Vakharia with regard to agricultural land and individual holding are concerned, they are purely questions of fact and this Court while exercising appellate powers in proceedings filed under Articles 226 and 227 of the Constitution of India is not inclined to go into questions of fact, more so when in all the three earlier stages, namely, at the stage of proceedings pending before the Competent Authority, pending before the Urban Land Tribunal in appeal and in Special Civil Application before the learned Single Judge of this Court the matter has been proceeded with on the footing that the land in question is not agricultural land and the entire block of land has been treated as one unit, since the proceedings have been

dealt with under the provisions of the Act.

6. In light of the above discussions, we hold that the judgment of the learned Single Judge is erroneous and it is required to be quashed and set aside and this appeal is required to be allowed.

7. In the result, this appeal is allowed with costs. The appellants are at liberty to proceed further and take all the necessary steps from the stage of section 11 of the Act onwards.

As the main appeal has been disposed of, no orders on Civil Application for stay.

[J.N. BHATT, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.